IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2689 OF 2007

Rajesh Vasantlal Shah ..Applicant

V/s.

Jay Prakash P. Seth & anr. ..Respondents

Mr.A.A.Kocharekar, advocate, for applicant
Mr.D.P.Adsule, Assistant Public Prosecutor for the State

CORAM : B.H.MARLAPALLE, J.

DATE : 25TH OCTOBER, 2007

P.C.

1. Heard Mr.A.A.Kocharekar, learned counsel for the applicant. Being aggrieved and dissatisfied by the Judgment and order passed by the learned Special Magistrate, 50th Court, Vikroli, Mumbai under Section 138 of the Negotiable Instrument Act, 1881, the applicant has filed this application under Section 378(4) of the Criminal Procedure Code for special leave to appeal.

2. As per the applicant, he had given a loan of

Rs.3,63,000/- to the accused by issuing five cheques bearing Nos.296978, 296979, 296980, 296981 and 296982 during the period from 3rd April, 1990 to 21st April, 1990 and in discharge of this, the accused had issued the dishonoured cheque in the sum of Rs.3,78,000/- (Exh.6). In his defence, the accused contended in his statement under Section 313 of the Criminal Procedure Code that he was in the business as a shareholder and the complainant joined him by investing an amount of Rs.3,63,000/-. The business suffered huge loss and the complainant realised that he would have no means of recovering the loss. He took away the signed blank cheque book and sought to encash the dishonoured cheque bearing No.320026 drawn on Indian Bank, Ghatkopar Branch, Mumbai in the sum of Rs.3,78,000/-.

3. The complainant examined himself and two more witnesses in addition to himself. The evidence of P.W.3 Mr.Mahadev S. Kachare, Public Relation Inspector, Ghatkopar(W) Post Office

clearly indicated that there was no proof to accept the contentions of the complainant that the statutory notice issued under Section 138 of the Negotiable Instrument Act, 1881 was received by the accused. P.W.2 Mr.Dinesh Kale, was the Officer working with the Standard Chartered Bank Ltd.(in which ANZ Grindlays Bank had merged). P.W.2 clearly stated that the five cheques from the account of the complainant could not be said to have been encashed in favour of M/s.M.P.Investments and these cheques were issued from the joint account of the complainant and his wife. The rebuttal of the evidence by way of examination-in-chief in support of the case of the accused is that the complainant had joined the accused in the business as share broker and had invested some money and cheque book of the accused was stolen. The following depositions of the complainant in the cross examination in this respect are relevant.

> "It is correct to say that I used to go office of the accused in connection with share dealings. It is not correct to say that I had lot of share transaction with the

> accused(witness volunteers they were few). It is not correct to say that during my visit with office of the accused I committed theft some blank signed cheques and other documents from his office. It is correct to say that in this connection I was called at Pant Nagar police station where my statement was also recorded."

4. I am, therefore, satisfied that the reasoning set out by the trial Court in support of the order of acquittal does not call for re-consideration. Hence, leave to appeal is refused. Application is rejected.

(**B.H.MARLAPALLE, J.**)